

REMARKS

Claims 19-28 have been cancelled. Claims 1, 37, and 38 have been amended to clarify the subject matter regarded as the invention. Claims 1-18 and 29-38 are pending.

Claim Rejections – 35 U.S.C. §103(a)

The Examiner has rejected Claims 1-6, 18, 37, and 38 under 35 U.S.C. §103(a) as being unpatentable over Schultz et al. (U.S. 2003/0065926) and Jordan (7,210,040). The Examiner has rejected Claims 7, 8, 10, 12-17, and 29-34 under 35 U.S.C. §103(a) as being unpatentable over Schultz and Jordan in view of Tajalli et al. (U.S. 2004/0143749). The Examiner has rejected Claims 9, 11, 35, and 36 under 35 U.S.C. §103(a) as being unpatentable over Schultz and Jordan in view of Khazan et al. (U.S. 2005/0108562). The rejections are respectfully traversed.

With respect to Claims 1, 37, and 38, the Examiner has acknowledged that Schultz does not disclose “updating the first risk level to a second risk level that is higher than the first risk level if a process **started by the executable after the executable has been allowed to execute** is observed to perform or attempt an action with which the second risk level is associated.” The Examiner has suggested that Jordan discloses this limitation. Jordan describes a system for detecting computer viruses that includes an emulator. In Jordan, the “[e]xecution of computer executable code in a subject file is **emulated by emulator 31.**” (5:36-38). Jordan explains that “[w]hile the program file is being **emulated**, monitor component 32 monitors the code execution... [and] detector component 33 detects an attempt by the **emulated** code to access one or more of the restricted computer system resources.” (5:38-47). Emulating the execution of executable code in a file (which requires the presence of an emulator) is not the same as **allowing the executable** itself to execute and updating the first risk profile to a second risk level based on observation of that executable. Claim 1 is therefore believed to be allowable.

Claims 2-18 and 29-36 depend from Claim 1 and are believed to be allowable for the same reasons described above.

The foregoing amendments are not to be taken as an admission of unpatentability of any of the claims prior to the amendments.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Wagner", with a long horizontal flourish extending to the right.

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